

AMENDED IN ASSEMBLY FEBRUARY 18, 2000
AMENDED IN ASSEMBLY SEPTEMBER 10, 1999
AMENDED IN ASSEMBLY SEPTEMBER 10, 1999
AMENDED IN ASSEMBLY JULY 7, 1999
AMENDED IN SENATE MAY 28, 1999
AMENDED IN SENATE APRIL 29, 1999
AMENDED IN SENATE APRIL 14, 1999
AMENDED IN SENATE APRIL 6, 1999

SENATE BILL

No. 1038

Introduced by Senator Burton

February 26, 1999

~~An act to amend Section 15700 of the Government Code, and to amend Section 23040.1 of the Revenue and Taxation Code, relating to taxation.~~ *An act to amend Sections 23040.1 and 30163 of the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1038, as amended, Burton. ~~FTB-membership~~ *Taxation: partnership investment income : cigarette tax.*

~~The~~

(1) The Bank and Corporation Tax Law provides that income from sources in this state is generally taxable. The law

exempts from taxation the distributive share of interest, dividends, and gains from the sale or exchange of qualifying investment securities derived by a corporation that is a partner in a partnership that qualifies as an investment partnership, if the income from the partnership is the only income of the corporation derived from sources in this state. This exemption does not apply if the corporation participates in the management of investment activities or is engaged in a unitary business with another corporation that meets specified qualifications.

This bill would provide that the exemption shall also apply to income, gain, or loss from stocks or securities received by an alien corporation whose sole activities in this state involve trading in those stocks or securities for the corporation's own account, with specified exceptions.

~~Existing law provides that the Franchise Tax Board consists of the State Controller, the Director of Finance, and the Chairman of the State Board of Equalization.~~

~~This bill would add the Treasurer and a public member to the Franchise Tax Board. The bill would provide for the Chair of the Franchise Tax Board to be selected on a rotating basis.~~

(2) The Cigarette and Tobacco Products Tax Law requires that an appropriate stamp be affixed to, or that an appropriate meter impression be made upon, each package of cigarettes prior to distribution, and prohibits any stamping or metering of packages of cigarettes unless those packages comply with federal labelling requirements for cigarettes to be sold within the United States. Existing law requires the State Board of Equalization to revoke the license issued to a distributor that is determined to be in violation of these stamping or metering requirements. Existing law provides for the forfeiture of the cigarettes in packages that are in violation, and provides that a violation of those requirements constitutes unfair competition.

This bill would additionally prohibit any stamp or meter impression from being affixed to, or made upon, packages of cigarettes if the package bears a cigarette brand name which is a registered trademark of a participating manufacturer, as defined, and the package was imported by anyone other than the participating manufacturer of that cigarette brand. By



creating a new crime in the form of a misdemeanor for a violation of these requirements, this bill would establish a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(4) The bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~ ²/₃. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 15700 of the Government Code~~
2 ~~is amended to read:~~
3 ~~15700. There is in the state government, in the~~
4 ~~Agriculture and Services Agency, a Franchise Tax Board~~
5 ~~consisting of the State Controller, the Director of~~
6 ~~Finance, the Chairman of the State Board of~~
7 ~~Equalization, the Treasurer, and one public member~~
8 ~~appointed by the Governor and confirmed by the Senate.~~
9 ~~The public member shall receive a per diem of one~~
10 ~~hundred dollars (\$100) for each day actually spent in the~~
11 ~~discharge of official duties and shall be reimbursed for~~
12 ~~traveling and other expenses necessarily incurred in the~~
13 ~~performance of official duties. Commencing with the~~
14 ~~2000 calendar year, the Chair of the Franchise Tax Board~~
15 ~~shall be rotated on an annual basis in a manner that~~
16 ~~ensures that no chair shall serve as the chair for more than~~
17 ~~one consecutive calendar year at a time. The Franchise~~
18 ~~Tax Board is the successor to, and is vested with, all of the~~
19 ~~duties, powers, purposes, responsibilities, and jurisdiction~~
20 ~~of the Franchise Tax Commissioner, but the statutes and~~
21 ~~laws under which that office existed and all laws~~
22 ~~prescribing the duties, powers, purposes, responsibilities~~
23 ~~and jurisdiction of that office, together with all lawful~~
24 ~~rules and regulations established thereunder, are~~

1 expressly continued in force. “Franchise Tax
2 Commissioner” when used in any statute, law, rule or
3 regulation now in force, or that may hereafter be enacted
4 or adopted, means the Franchise Tax Board. No action to
5 which the Franchise Tax Commissioner is a party shall
6 abate by reason hereof but shall continue in the name of
7 the Franchise Tax Board, and the Franchise Tax Board
8 shall be substituted for the Franchise Tax Commissioner
9 by the court wherein the action is pending. The
10 substitution shall not in any way affect the rights of the
11 parties to the action.

12 Notwithstanding any other provision of the law to the
13 contrary, any directive or regulation adopted by the
14 Franchise Tax Board shall take precedence over any
15 directive or regulation adopted by its executive officer.

16 **SEC. 2.**

17 *SECTION 1.* Section 23040.1 of the Revenue and
18 Taxation Code is amended to read:

19 23040.1. (a) Notwithstanding Sections 23040 and
20 25101, income derived from or attributable to sources
21 within this state shall not include:

22 (1) The distributive share of interest, dividends, and
23 gains from the sale or exchange of qualifying investment
24 securities derived by a corporation that is a partner in a
25 partnership that qualifies as an investment partnership
26 under Section 17955, whether or not the partnership has
27 a usual place of business in this state, if the income from
28 the partnership is the corporation’s only income derived
29 from or attributable to sources within this state.

30 (2) Income, gain, or loss from stocks or securities
31 received by an alien corporation whose sole activities in
32 this state involve trading in those stocks or securities for
33 the corporation’s own account within the meaning of
34 Section 864(b)(2)(A)(ii) of the Internal Revenue Code,
35 whether the trading is done by the corporation or its
36 employees or through a resident broker, commission
37 agent, custodian, or other agent, and whether or not any
38 such employee or agent has discretionary authority to
39 make decisions in effecting the transactions. This

1 paragraph shall not apply in the case of a dealer in stocks
2 or securities.

3 (b) (1) Paragraph (1) of subdivision (a) shall not
4 apply to a corporation that participates in the
5 management of the investment activities of the
6 investment partnership or that is engaged in a unitary
7 business with another corporation or partnership that
8 participates in the management of the investment
9 activities of the partnership or has income derived from
10 or attributable to sources within this state other than
11 income described in paragraph (1) of subdivision (a).

12 (2) Paragraph (2) of subdivision (a) shall not apply to
13 an alien corporation that itself has, or that is engaged in
14 a unitary business with another corporation that has,
15 income derived from or attributable to sources within this
16 state other than income described in paragraph (2) of
17 subdivision (a).

18 (c) An alien corporation (other than a dealer in stocks
19 or securities) trading in stocks or securities for ~~it's~~ *its* own
20 account, as described in paragraph (2) of subdivision (a),
21 is not doing business in this state for purposes of Chapter
22 2 of this part.

23 (d) For purposes of this section:

24 (1) "Alien corporation" means a corporation
25 organized under the laws of a country, or any political
26 subdivision thereof, other than the United States.

27 (2) "Dealer in stocks or securities" means a dealer in
28 stocks or securities for purposes of Section
29 864(b)(2)(A)(ii) of the Internal Revenue Code.

30 (3) "Investment partnership" means a partnership
31 that meets both of the following requirements:

32 (A) No less than 90 percent of the partnership's cost of
33 its total assets consist of qualifying investment securities,
34 deposits at banks or other financial institutions, and office
35 space and equipment reasonably necessary to carry on its
36 activities as an investment partnership.

37 (B) No less than 90 percent of its gross income consists
38 of interest, dividends, and gains from the sale or exchange
39 of qualifying investment securities.

1 (4) (A) “Qualifying investment securities” include all
2 of the following:

3 (i) Common stock, including preferred or debt
4 securities convertible into common stock, and preferred
5 stock.

6 (ii) Bonds, debentures, and other debt securities.

7 (iii) Foreign and domestic currency deposits or
8 equivalents and securities convertible into foreign
9 securities.

10 (iv) Mortgage- or asset-backed securities secured by
11 federal, state, or local governmental agencies.

12 (v) Repurchase agreements and loan participations.

13 (vi) Foreign currency exchange contracts and
14 forward and futures contracts on foreign currencies.

15 (vii) Stock and bond index securities and futures
16 contracts, and other similar financial securities and
17 futures contracts on those securities.

18 (viii) Options for the purchase or sale of any of the
19 securities, currencies, contracts, or financial instruments
20 described in clauses (i) to (vii), inclusive.

21 (ix) Regulated futures contracts.

22 (B) “Qualifying investment securities” does not
23 include an interest in a partnership unless that
24 partnership is itself an investment partnership.

25 (5) “Stocks or securities” has the same meaning as
26 applies to that phrase as used in Section 864(b)(2)(A)(ii)
27 of the Internal Revenue Code.

28 (e) The amendments made to this section by the act
29 adding this subdivision shall apply to income years
30 beginning on or after January 1, 1999.

31 *SEC. 2. Section 30163 of the Revenue and Taxation*
32 *Code is amended to read:*

33 30163. (a) Except as otherwise provided in this
34 section, an appropriate stamp shall be affixed to, or an
35 appropriate meter impression shall be made on each
36 package of cigarettes prior to the distribution of the
37 cigarettes.

38 (b) No stamp or meter impression may be affixed to,
39 or made upon, any package of cigarettes if any one of the
40 following occurs:

(1) The package does not comply with all requirements of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. Sec. 1331 and following) for the placement of labels, warnings, or any other information upon a package of cigarettes that is to be sold within the United States.

(2) The package is labeled “For Export Only,” “U.S. Tax Exempt,” “For Use Outside U.S.,” or similar wording indicating that the manufacturer did not intend that the product be sold in the United States.

(3) The package, or a package containing individually stamped packages, has been altered by adding or deleting the wording, labels, or warnings described in paragraph (1) or (2).

(4) The package was imported into the United States after January 1, 2000, in violation of Section 5754 of Title 26 of the United States Code.

(5) (A) *The package bears a cigarette brand name which is a registered trademark of a participating manufacturer and the package was imported by anyone other than the participating manufacturer of that cigarette brand.*

(B) *For purposes of this paragraph, “participating manufacturer” has the same meaning as defined in paragraph (1) of subdivision (a) of Section 104557 of the Health and Safety Code and in Section II(jj) of the Master Settlement Agreement described in Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code.*

(c) Pursuant to its authority under Section 30148, the board shall revoke the license issued to a distributor that is determined to be in violation of this section.

(d) A violation of subdivision (b) shall constitute unfair competition under Section 17200 of the Business and Professions Code.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction,

1 *eliminates a crime or infraction, or changes the penalty*
2 *for a crime or infraction, within the meaning of Section*
3 *17556 of the Government Code, or changes the definition*
4 *of a crime within the meaning of Section 6 of Article*
5 *XIII B of the California Constitution.*

6 *SEC. 4. This act is an urgency statute necessary for*
7 *the immediate preservation of the public peace, health,*
8 *or safety within the meaning of Article IV of the*
9 *Constitution and shall go into immediate effect. The facts*
10 *constituting the necessity are:*

11 *In order to encourage affiliation with and investment*
12 *in California businesses and to clarify the status of*
13 *imported cigarettes under the Cigarette and Tobacco*
14 *Products Tax Law, it is necessary that this act take effect*
15 *immediately.*

